

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

RICARDO L. GABINO,

Petitioner,

v.

Case No. 08-CV-850

MICHAEL DITTMAN and THE ATTORNEY GENERAL
OF THE STATE OF WISCONSIN,

Respondents.

ORDER

On October 10, 2008, petitioner Ricardo L. Gabino (“Gabino”) filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. After screening Gabino’s petition under Rule 4 of the Rules Governing Section 2254 Cases, the court set a briefing schedule for respondent to answer Gabino’s petition. Since then, respondents have filed a motion to dismiss the Attorney General of the State of Wisconsin as a party to this action.

Under Rule 2 of the Rules Governing Section 2254 Cases, if a habeas petitioner is in custody pursuant to a state court judgment, the petitioner must name as the respondent the state officer who has custody – typically a prison warden. Only where a petitioner is not yet in custody is it appropriate to name the state’s attorney general as a respondent. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (citing *Hogan v. Hanks*, 97 F.3d 189, 190 (7th Cir. 1996)). Since Gabino is

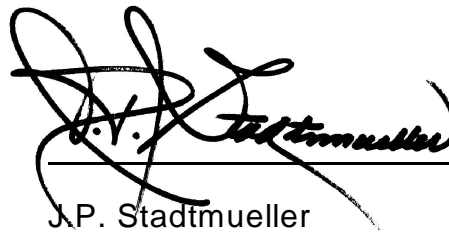
currently confined to the Kettle Moraine Correctional Institution, the attorney general is not a proper respondent.

Accordingly,

IT IS ORDERED that respondents' motion to dismiss (Docket # 13) be and the same is hereby **GRANTED** and the Attorney General of the State of Wisconsin is hereby **DISMISSED** as a respondent in this case.

Dated at Milwaukee, Wisconsin, this 18th day of August, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line.

J.P. Stadtmueller
U.S. District Judge